

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:

UNITED STATES OF AMERICA

- v. -

: AMENDED PRELIMINARY
ORDER OF FORFEITURE/
: MONEY JUDGMENT

OSVALDO RIVERA-RODRIGUEZ,
a/k/a "Barriguita,"

: S2 12 Cr. 269 (JGK)

Defendant. :

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WHEREAS, on or about February 11, 2013, OSVALDO RIVERA-RODRIGUEZ, a/k/a "Barriguita" (the "defendant"), and another, were charged in a five-count Indictment, S2 12 Cr. 269 (JGK) (the "Indictment"), with participating in a robbery conspiracy, in violation of Title 18, United States Code, Section 1951 (Count One); participating in a robbery, in violation of Title 18, United States Code, Section 1951 (Count Two); possessing and brandishing, and aiding and abetting the possession and brandishing, of a firearm in connection with the robbery conspiracy, in violation of Title 18, United States Code, Section 924(c) (Count Three); possessing and brandishing, and aiding and abetting the possession and brandishing, of a firearm in connection with the robbery, in violation of Title 18, United States Code, Section 924(c) (Count Four); and participating in a conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine, in violation of Title 21, United States Code, Section 846 and 841 (b)(1)(A) (Count Five);

WHEREAS, the Indictment included a forfeiture allegation as to Counts One and Two of the Indictment seeking forfeiture to the United States, pursuant to Title 18, United States Code, Section 981 (a)(1)(C) and Title 28, United States Code, Section 2461, of all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of one or more of the offenses charged in Counts One and Two of the Indictment;

WHEREAS, the Indictment included a second forfeiture allegation as to Count Five of the Indictment seeking forfeiture to the United States, pursuant to Title 21, United States Code, Section 853, of any and all property constituting or derived from any proceeds the defendant obtained directly or indirectly as a result of the offense charged in Count Five of the Indictment and any and all property used or intended to be used in any manner or part to commit and to facilitate the commission of the offense charged in Count Five of the Indictment;

WHEREAS, on or about January 31, 2014, the defendant pled guilty to Counts Two, Four, and Five of the Indictment, pursuant to a plea agreement with the Government, wherein the defendant admitted the forfeiture allegations with respects to Counts Two and Five of the Indictment, and agreed to forfeit to the United States: (i) pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section

2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense charged in Count Two of the Indictment, including \$27,000 in United States currency, constituting the proceeds obtained as a result of the offense charged in Count Two of the Indictment; and (ii) pursuant to Title 21, United States Code, Section 853, and Title 28, United States Code, Section 2461, any and all property the defendant obtained from or used to facilitate the offense charged in Count Five of the Indictment;

WHEREAS, on or about June 7, 2018, the Court entered a Consent Preliminary Order of Forfeiture/Money Judgment which ordered, among other things, that a money judgment in the amount of \$27,000 in United States currency be entered against the defendant;

WHEREAS, on or about May 13, 2020, the Court of Appeals remanded this matter to, *inter alia*, determine the forfeiture amount consistent with the holding in *United States v. Honeycutt*, 137 U.S. 1626 (2017);

WHEREAS, the Government seeks a money judgment in the amount of \$4,500 in United States currency pursuant to Title 18, United States Code, Section 981 (a)(1)(C) and Title 28, United States Code, Section 2461, representing the amount of proceeds

traceable to the offense charged in Count Two of the Indictment that the defendant personally obtained; and

WHEREAS, the Court finds that, as a result of acts and/or omissions of the defendant, the proceeds traceable to the offense charged in Count Two of the Indictment that the defendant personally obtained cannot be located upon the exercise of due diligence.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. As a result of the offense charged in Count Two of the Indictment, to which the defendant pled guilty, a money judgment in the amount of \$4,500 in United States currency (the "Money Judgment"), representing the amount of proceeds traceable to the offense charged in Count Two of the Indictment that the defendant personally obtained, shall be entered against the defendant.

2. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, this Amended Preliminary Order of Forfeiture/Money Judgment is final as to the defendant, OSVALDO RIVERA-RODRIGUEZ, and shall be deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith.

3. All payments on the outstanding Money Judgment shall be made by postal money order, bank or certified check, made payable to the "United States Marshals Service" and delivered by mail to the United States Attorney's Office, Southern District of New York, Attn: Money Laundering and Transnational Criminal Enterprises Unit, One St. Andrew's Plaza, New York, New York 10007 and shall indicate the defendant's name and case number.

4. The United States Marshals Service or its designee is authorized to deposit the payments on the Money Judgment in the Asset Forfeiture Fund, and the United States shall have clear title to such forfeited property.

5. Pursuant to Title 21, United States Code, Section 853(p), the United States is authorized to seek forfeiture of substitute assets of the defendant up to the uncollected amount of the Money Judgment.

6. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Amended Preliminary Order of Forfeiture/Money Judgment, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas.

7. This Court shall retain jurisdiction to enforce this Amended Preliminary Order of Forfeiture/Money Judgment, and to amend it as necessary, pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure.

8. The Clerk of the Court shall forward three certified copies of this Amended Preliminary Order of Forfeiture/Money Judgment to Assistant United States Attorney Alexander J. Wilson, Co-Chief, Money Laundering and Transnational Criminal Enterprises Unit, United States Attorney's Office, One Saint Andrews Plaza, New York, New York 10007.

Dated: New York, New York
July 16, 2020

SO ORDERED:

/s/ John G. Koeltl

HONORABLE JOHN G. KOELTL
UNITED STATES DISTRICT JUDGE